

NORTHWEST MINING & MERCANTILE, INC.

IBLA 79-391

Decided April 8, 1980

Appeal from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. OR MC 3156 and OR MC 3157.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly conclusively deemed to have been abandoned and to be void.

APPEARANCES: Stephen K. Glass, Director of Mining, Northwest Mining & Mercantile, Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated April 4, 1979, of the Oregon State Office, Bureau of Land Management (BLM), holding the Oregon Canyon #1 and #2 mining claims, OR MC 3156 and 3157, void for failure to file assessment statements or notices to hold the claims as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), hereinafter FLPMA.

The claims involved in this appeal were located September 20, 1977. The decision appealed from states that no assessment statement (proof of labor) or notice of intention to hold the claims was received by BLM prior to December 31, 1978, as required by FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The file contains photocopies of notices of location of placer claims indicating that such notices were filed pursuant to Oregon State law with the County Recorder, County of Malheur, in September 1977. These documents are date stamped "November 2, 10:00 AM '77" by the Oregon State Office.

Appellant states that assessment statements were sent to BLM in October of 1978. There is no proof in the record that these statements were transmitted. BLM indicates that proof of filings are acknowledged by BLM form 3830-1. Appellant did not mention receiving an acknowledgment and did not provide a copy of the assessment proof until filing its appeal with this Board. The record shows proof of labor was filed October 18, 1979, and November 13, 1979, for the respective claims.

[1] Sections 314(a)(1) and (2) of FLPMA, 43 U.S.C. §§ 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims were located after October 21, 1976, in calendar year 1977. Thus, one or the other of the documents had to be filed prior to December 31 of 1978, the year following the calendar year in which the claims were located, in order to meet the requirements of the law.

When appellant failed to file timely either an affidavit or notice of intention, BLM properly held the claims to have been abandoned and declared them void. Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Edward W. Stuebing
Administrative Judge

